1419.

SUPREME COURT OF THE UNITED STATES.

No. 120.

PATRICK McLAUGHLIN, Plaintiff in Error,

vs.

JAMES SWAN and JOHN S. GITTINGS, Garnishees of the CHESAPEAKE AND OHIO CANAL COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two—

Present, the Honorable

ROGER BROOK TANEY,
Chief Justice of the Supreme Court of the United States.

JOHN GLENN,
Judge of Maryland District.

Z. COLLINS LEE, ESQ.,
Attorney.

THOMAS H. KENT (of Jno.),
Marshal.

THOMAS SPICER,
Clerk.

Among other were the following proceedings, to wit:—

PATRICK MCLAUGHLIN
vs.
JAMES SWAN & JOHN S. GITTINGS, Garnishees of the Chesapeake and Ohio Canal Company.

Be it remembered that heretofore, to wit: on the 4th day of June, in the year of our Lord one thousand eight hundred and forty-one, the said Patrick McLaughlin, by John V. L. McMahon and Reverdy Johnson, his attorneys, prosecuted and sued forth, out of the Circuit Court hereof, and upon a judgment in the Court here, rendered against the said Chesapeake and Ohio Canal Company, the writ of the United States of America of attachment of and upon the judgment aforesaid, to the Marshal of the Maryland District aforesaid, directed in the words and of the tenor following, to wit:—

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Marshal of the Maryland District, greeting:—

[SEAL.] Whereas, at Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty, a certain

Patrick McLaughlin, an alien, and subject of the Queen of Great Britain and Ireland, by the judgment of the said Court, recovered against the Chesapeake and Ohio Canal Company, incorporated by the State of Maryland, and whose stockholders are citizens of the State of Maryland, as well the sum of ten thousand dollars, current money, for his damages, which he had sustained by reason of a certain trespass by the said Chesapeake and Ohio Canal Company, committed on the goods and chattels of the said Patrick McLaughlin, with force and arms, &c., as the sum of six hundred and fifty dollars and sixty cents for his costs and charges by him about his suit in that behalf laid out and expended, whereof the said Chesapeake and Ohio Canal Company are convict, as it appeareth of record:

Therefore you are hereby commanded to attach any of the lands, tenements, goods, chattels, and credits of the said Chesapeake and Ohio Canal Company, if they shall be found in your district, to the value of the damages, costs, and charges aforesaid; and when you have the same so attached, or any part thereof, the same in your custody safe keep so that you have the same before the said Circuit Court, to be held at the city of Baltimore on the first Monday in November next, then and there to be condemned according to statute in such cases made and provided, to and for the use of the said Patrick McLaughlin, unless the said Chesapeake and Ohio Canal Company shall come then and there by themselves or lawful attorney, and show sufficient cause to the contrary: And you are likewise commanded by good and lawful men of your District to make known to such person or persons in whose hand or possession the said goods, chattels, and credits of the said Chesapeake and Ohio Canal Company shall be attached, that he or they be and appear at the said Court, at the day and place aforesaid, to show cause (if they have any) why the said goods, chattels, and credits, so as aforesaid in their hands attached should not be condemned, and execution thereof had and made, as in other cases of recoveries and judgments given in Courts of record, according to the directions of the statute aforesaid, if to him, her, or them it shall seem meet; and how you shall execute this writ make known unto the said Court on the day and at the place aforesaid; and have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred aud forty-one.

THO. SPICER,
Cl'k Circ't Ct.

J. V. L. McM.
R. J.

Issued 4th June, 1841.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and forty-one, being the day of the return

of the said aforegoing writ, comes into the Circuit Court here the said Patrick McLaughlin, by his attorneys aforesaid, and the Marshal of the Maryland District aforesaid, to Nicholas Snider, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return of the said writ to the Court here, thereon endorsed, to wit:—

"Laid in the hands of James Swan at ¼ past one o'clock, at the Merchants' Bank, 4th June, 1841, in presence of Chas. Goodwin and Enoch M. Lowry." "Laid in the hands of John S. Gittings at 20 minutes past 3 o'clock P. M., at the Chesapeake Bank, 4th June, 1841, in presence of John D. Becher and W. S. Gittings.

NICH. SNIDER,
Marshal."

And the said Chesapeake and Ohio Canal Company, although solemnly called, comes not; and the said James Swan and John S. Gittings, garnishees of the said Chesapeake and Ohio Canal Company, in whose hands the lands, tenements, goods, chattels and credits of the said Chesapeake and Ohio Canal Company were so as aforesaid attached, being called, come into the Circuit Court here, by J. Mason Campbell and Edward D. Kemp, their attorneys.

And the said Patrick McLaughlin, by his attorneys aforesaid, exhibits in Court here interrogatories in writing to the said garnishees aforesaid, and which are as follows, to wit:—

PATRICK MCLAUGHLIN
vs.
JOHN S. GITTINGS and JAMES SWAN, Garnishees of the Chesapeake and Ohio Canal Company.

Attachment on judgment in the Circuit Court of the United States in and for the District of Maryland.

Interrogatories

To be answered by John S. Gittings and James Swan, the Garnishees.

First. At the time the attachment issued in this cause was laid in your hands, to wit: on the 4th day of June, in the year eighteen hundred and forty-one, were you in any manner indebted to the Chesapeake and Ohio Canal Company, the defendant named in the title to these interrogatories; or have you at any time since been, or are you now indebted to the said Chesapeake and Ohio Canal Company, or to any other person for its use or benefit? If yea, state particularly the amount of such debt, the consideration on which it was or is founded, the time when it was contracted, and when it was or will be due or payable, and if payable to any other person for the defendant's use, to whom it is payable.

Second. Had you, at the time the said attachment was laid in

your hands, or at any time since, or have you now in your possession or under your care or trust, any goods, chattels, merchandise, property, money, or effects belonging to the said Chesapeake and Ohio Canal Company, or to which it has or had any right, title, interest, or claim, either in severalty or jointly, or in common with another or with others? If yea, give a particular description of such property, goods, chattels, merchandise, or effects, the quantity, quality, and value, the place where the same is or are deposited, the nature and quantity of the right, title, interest, or claim of the said Chesapeake and Ohio Canal Company in or to the same, and the nature and extent of the lien or liens, if any, on the same.

Third. Was there any agreement, written or verbal, made between you and the said Chesapeake and Ohio Canal Company, and in existence at the time the said attachment was laid in your hands, or at any time since, in virtue of which you were or are to hold any money, effects, or property, real or personal, or any interest, right, estate or claim at law, or in equity, in or to any lands, tenements or hereditaments in trust for the said Chesapeake and Ohio Canal Company, or for its use or benefit? If yea, state particularly the terms of that agreement; if in writing, produce to the Court here a copy of it. State the time when it was made, the quantity, quality, and value of the property on which it was, does, or is to operate, or which you held, now hold, or are to hold, in virtue thereof, and in whose hands the said agreement, if in writing, or the effects, money, or property on which it was or is to operate, was or now is.

Fourth. Have you, at any time since the said attachment was laid in your hands, paid any sum of money, or delivered any goods, property, or effects to the said Chesapeake and Ohio Canal Company, or to any person for its use or benefit? If yea, state the amount of money so paid, describe the kind, quantity, quality and value of the goods, property, and effects so delivered, and name the person to whom the same was so paid and delivered.

J. V. L. McMAHON,
R. JOHNSON,
Attorneys for Plaintiff.

PATRICK McLAUGHLIN
against
JOHN S. GITTINGS, Garnishee of the Chesapeake and Ohio Canal Company.

Attachment on judgment in the Circuit Court of the United States for the 4th Circuit in and for the District of Maryland.

Interrogatories to be answered by John S. Gittings, the Garnishee.

First. At the time the attachment issued in this cause was laid in your hands, to wit: on the fourth day of June, in the year eighteen hundred and forty-one, at 20 minutes past 3 o'clock, were you in any manner indebted to the Chesapeake and Ohio Canal Com-

pany, the defendant named in the title to these interrogatories, or have you at any time since been or are you now indebted to the said Chesapeake and Ohio Canal Company, or to any person for its use or benefit? If yea, state particularly the amount of such debt, the consideration on which it was or is founded, the time when it was contracted, and when it was or will be due or payable, and if payable to any other person for the defendant's use, to whom it is payable.

Second. Had you, at the time the said attachment was laid in your hands, or at any time since, or have you now in your possession or under your care or trust any goods, chattels, merchandise, property, money, or effects, belonging to the said Chesapeake and Ohio Canal Company, or to which it has or had any right, title, interest, or claim, either in severalty or jointly, or in common with another or with others? If yea, give a particular description of such property, goods, chattels, merchandise, or effects, the quantity, quality, and value, the place where the same is or are deposited, the nature and quantity of the right, title, interest, or claim of the said Chesapeake and Ohio Canal Company in and to the same, and the nature and extent of the lien or liens, if any, on the same.

Third. Was there any agreement, written or verbal, made between you and the said Chesapeake and Ohio Canal Company and in existence at the time the said attachment was laid in your hands, or at any time since, in virtue of which you were or are to hold any money, effects, or property, real or personal, or any interest, right, estate, or claim, at law or in equity, in or to any lands, tenements, or hereditaments in trust for the said Chesapeake and Ohio Canal Company, or for its use or benefit? If yea, state particularly the terms of that agreement; if in writing, produce to the Court here a copy of it; state the time when it was made, the quantity, quality, and value of the property on which it was, does, or is to operate, or which you held, now hold, or are to hold in virtue thereof, and in whose hands the said agreement, if in writing, or the effects, money, or property on which it was or is to operate, was or now is.

Fourth. Have you, at any time since the said attachment was laid in your hands, paid any sum of money or delivered any goods, property, or effects to the said Chesapeake and Ohio Canal Cmpany, or to any person for its use or benefit? If yea, state the amount of money so paid, describe the kind, quantity, quality, and value of the goods, property, and effects so delivered, and name the person to whom the same was so paid and delivered.

J. V. L. McMAHON,
R. JOHNSON,
Attorneys for the Plaintiff, Patrick McLaughlin.

And the said James Swan and John S. Gittings, by their attorneys aforesaid, file in the Circuit Court here their several answers to the said interrogatories of the said Patrick McLaughlin, in the words and of the tenor following, to wit:—

PATRICK MCLAUGHLIN
vs.
JOHN S. GITTINGS and JAMES SWAN, Garnishees of the Chesapeake and Ohio Canal Company.

In the Circuit Court of the United States for the Fourth Circuit and District of Maryland.

The answer of James Swan, Garnishee, to the interrogatories exhibited against him by the plaintiff in this cause.

This respondent saith, that under a deed executed by the Chesapeake and Ohio Canal Company, on the 15th April, 1840, to himself, John S. Gittings, and William Gunton, certain bonds of the State of Maryland were assigned to them in trust, to sell the same and to appropriate the proceeds to the redemption of certain issues of scrip of the said Chesapeake and Ohio Canal Company, particularly specified in said deed.

That the bonds aforesaid, when sold, and the proceeds thereof were, by the direction of said Canal Company, placed in the hands of the said Gittings, his co-trustee, for the purpose of redeeming the said scrip as it was presented, and that said Gittings made all the disbursements and kept the accounts of the trust funds.

That this respondent is therefore unable, of his own knowledge, to state what is the exact balance of the trust funds in the hands of his co-trustee.

From the best information in his possession, he believes that on or about the 9th February, 1841, when the last sale of bonds was effected, there was a balance of about forty-two thousand dollars of the trust funds, subject, however, to the redemption of some scrip then outstanding. That the payment on account of commissions and other charges would reduce this amount to about $35,000.

This respondent further shows that on or about the 25th of September, 1840, he received notice from the Bank of Potomac, in the District of Columbia, that it held a bond of the Chesapeake and Ohio Canal Company for the sum of seventeen thousand three hundred and seventy-nine dollars and twenty cents ($17,379\frac{20}{100}$), and that it claimed payment of the same, when due, out of any balance of the trust funds which remained after the redemption of the scrip stated in the deed of trust, and that said Canal Company had pledged said balance for the payment of said bond; that on the 16th of October following, he received notice from said bank of the protest of said bond for non-payment.

That on the 24th June, 1841, the said Bank of Potomac filed its original bill in the High Court of Chancery of Maryland against this respondent and others to recover the said claim, and this respondent has, in answer to said bill, stated his belief that said demand is a just one and ought to have been paid, and that said suit is still pending.

This respondent has no knowledge of any payment having been made out of the said trust funds since the service of this attachment.

J. SWAN.

E. D. KEMP,
Attorney for Respondent.

STATE OF MARYLAND, CITY OF BALTIMORE, *sct.*

Before the subscriber, a Justice of the Peace of the State of Maryland in and for the city aforesaid, personally appeared, on this second day of December, in the year of our Lord eighteen hundred and forty-one, James Swan, and made oath that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

Sworn and subscribed before me,

ENOCH M. LOWRY.

And thereupon the said Patrick McLaughlin, by his attorneys aforesaid, prays that the said James Swan and John S. Gittings, Garnishees as aforesaid, may answer to the writ of attachment aforesaid.

Whereupon it is ruled by the Court here that the said James Swan and John S. Gittings, Garnishees as aforesaid, answer to the writ of attachment aforesaid in the plea aforesaid, or judgment will be rendered against them in default thereof.

And the said James Swan and John S. Gittings, Garnishees as aforesaid, by their attorneys aforesaid defend the force and injury when, and soforth, and say that the said Patrick McLaughlin's condemnation in the hands of them, the said James Swan and John S. Gittings, of the effects of the said Chesapeake and Ohio Canal Company ought not to have, because they say that at the time of laying the said attachment in their hands, they had not, nor at any other time since have had, nor now have, any of the goods, chattels, and credits of the said Chesapeake and Ohio Canal Company in their hands, and of this they put themselves upon the county; and the said Patrick McLaughlin in like manner, &c.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of Court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1842, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Whereupon, for trying the issue aforesaid, it is ordered by the Court here that 20 persons from the panel of the petit jurors, returned to the Court here by the Marshal of the Maryland District aforesaid, be drawn by ballot; and thereupon, the 20 persons being so drawn by ballot and written upon two lists, one of which said lists is

delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining 12 persons being called, come, to wit: William Krebbs, Walter Purdue, Peter S. Owings, Benjamin O. Loundes, Samuel Ecker, Thomas W. Hall, Stephen Gorsuch, George Tyler, Samuel Purviance, Edward Ewyse, Kerney Johns, John Hoxton: who being empanelled and sworn to say the truth in the premises—

Whereupon, for certain reasons as well to the Court here as to the parties aforesaid appearing, the said John Hoxton, one of the jurors of the jury within mentioned, from the panel aforesaid is withdrawn by consent of the said parties, by their attorneys aforesaid, and by order of the Court here, and the rest of the jurors of that jury are wholly discharged from giving any verdict of and upon the premises within mentioned.

Thereupon further process of and in the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1845, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1845, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1846, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1846, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1847,

comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1847, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1848, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1848, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1849, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1849, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1850, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1850, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1851, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1851, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1852, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord 1852, comes again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Whereupon, for trying the issue aforesaid, it is ordered by the Court here that 20 persons from the panel of petit jurors returned to the Court here by the Marshal of the Maryland District aforesaid be drawn by ballot, and thereupon, the 20 persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out 4 persons from the said lists, the remaining persons being called, come, to wit:—

Theodore Denny, John C. Welch, John Rigney, George Ward, Wm. McCardle, David F. Hammett, Charles H. Clark, Thomas Snowden, Gideon Bantz, James W. Collins, David A. McCrea, William P. Patterson.

Who being empanelled and sworn to say the truth in the premises, upon their oath do say, that the said James Swan and John S. Gittings, at the time of laying the said attachment in their hands, that is to say, on the 4th day of June, 1841, at the district aforesaid, had not, nor have they since had, nor have they now in their

hands any of the goods, chattels and credits of the said Chesapeake and Ohio Canal Company, as the said James Swan and John S. Gittings by their said plea have alleged. Therefore it is considered by the Court here, that the said Patrick McLaughlin take nothing by his said writ of attachment, against the said James Swan and John S. Gittings; and that they, the said James Swan and John S. Gittings, go thereof without day, &c.

It is also considered by the Court here, that the said James Swan and John S. Gittings recover against the said Patrick McLaughlin the sum of for their costs and charges by them about their defence in this behalf laid out and expended, and that they have thereof their execution against the said Patrick McLaughlin.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the Court here, the said Patrick McLaughlin, by his attorneys aforesaid, tendered to the Court here the following bill of exceptions, and which was by the Court here signed and sealed, and which is in form following, to wit:—

PATRICK MCLAUGHLIN
vs.
JOHN S. GITTINGS, Garnishee of the Chesapeake and Ohio Canal Company.

At the trial of this cause, the plaintiff, to maintain the issue on his part joined, offered and read in evidence the following deed from the Chesapeake and Ohio Canal Company, the defendant named in the writ of attachment, to James Swan and John S. Gittings, Garnishees, and William Gunton, having first proved that they were duly executed.

Whereas, the Chesapeake and Ohio Canal Company did, by Resolution of the President and Directors thereof, dated the twenty-fifth day of September, eighteen hundred and thirty-nine, resolve, order and determine to issue various promissory notes or scrip in payment of debts due or to become due by said Company (and made payable to the person or persons entitled to receive the same, or to bearer), and whereas the Bank of Washington, in the city of Washington, at the instance of the said Chesapeake and Ohio Canal Company, did endorse certain bills of exchange drawn by the President of said Chesapeake and Ohio Canal Company, to and for the use of the same, upon George Peabody, Esquire, agent of said Company in London, of the payment of which said bills of exchange no notice has as yet been received by the said Company; and whereas the said Chesapeake and Ohio Canal Company, being desirous of securing the payment of the said promissory notes or scrip, as well the said promissory notes or scrip already issued or to be issued, in virtue of the Resolution aforesaid, as also the payment of the promissory notes or scrip of the said Canal Company which has been issued under former resolutions, and in pursuance of the same, and to indemnify

and save harmless the Bank of Washington from their liability as aforesaid, did by a resolution of the President and Directors of said Chesapeake and Ohio Canal Company, dated the twenty-second day of January, in the year one thousand eight hundred and forty, direct the President of said Canal Company to assign and transfer certain bonds of the State of Maryland, and also a certain claim upon the said State of Maryland for other bonds, the property of said Canal Company, hereinafter more fully described to James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, any two of whom shall have power to act in trust for the purposes hereinafter expressed, and did further order and direct this deed to be executed by the President of said Canal Company in their name, and by their authority, more fully to carry into effect the objects and intents of said resolution:

Now, therefore, this Indenture, made this twenty-second day of January, in the year one thousand eight hundred and forty, between the Chesapeake and Ohio Canal Company by Francis Thomas, President thereof, acting in the name and behalf of said Company, and in consideration of the premises, and in due and faithful performance of the intent of said Company, as ordered and determined as aforesaid, and of the power and authority vested in the said President and Directors as aforesaid, and in the said Francis Thomas, President of the Chesapeake and Ohio Canal Company of the one part, and James Swan, John S. Gittings, and William Gunton, of the other part, witnesseth, that for and in consideration of the premises aforesaid, and of the sum of five dollars, current money, to him the said Francis Thomas, of the first part, in hand paid for the said Chesapeake and Ohio Canal Company by the said James Swan, John S. Gittings, and William Gunton, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Francis Thomas, President of the Chesapeake and Ohio Canal Company, acting in the name and in behalf of the said Company, and in the due and faithful performance and execution of the intent of the said Company, as expressed in the resolution aforesaid, and of the power and authority vested in him as aforesaid, have given, granted, transferred, bargained, and sold, and by these presents doth give, grant, transfer, bargain, and sell unto James Swan, John S. Gittings, and William Gunton, and to the survivor of them, and to the heirs of such survivor, in trust for the purposes hereinafter particularly set forth and expressed, all the interest, right, property, claim, and estate, which the said Chesapeake and Ohio Canal Company hath in and to forty bonds of the State of Maryland, bearing five per centum interest, each bond for two hundred and fifty pounds sterling, and numbered as follows: Numbers 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921: All of which

said bonds, numbered and described as aforesaid, and now in the custody of the Bank of Washington. Also, all the right, title, and claim, and interest of the said Canal Company in and to two hundred and eight bonds of the said State of Maryland, bearing five per centum interest, each bond for two hundred and fifty pounds sterling, numbered from 2642 to number 2849, in regular succession, both numbers being ; which said bonds are now in the custody of the Bank of America, in the City of New York, and all of which said bonds have been issued in favor of said Canal Company, under the Act of the General Assembly of the State of Maryland, passed at the December Session, in the year 1838, chapter 386. Also, all the right, title, interest, and claim which the said Chesapeake and Ohio Canal Company has in and to a further issue of bonds to the said Canal Company, under the provisions of the third section of the Act of the General Assembly of Maryland, passed at its December Session, in the year 1838, entitled "An Act to provide ways and means to meet the subscriptions on the part of the State to works of internal improvements," and to the bonds which may be issued in favor of said Canal Company, in virtue of the said provisions of the said section of said act, to have and to hold the said Bonds of the State of Maryland, so as aforesaid described, as with those already issued as those that may issue as aforesaid to them, the said James Swan, John S. Gittings, and William Gunton, and to the survivor of them, and to the heirs of such survivor, in trust, nevertheless, for the uses, intents, and purposes herein particularly described and declared, and to and for no other use, intent, or purpose whatsoever; that is to say, for the faithful payment of the promissory notes or scrip of the Chesapeake and Ohio Canal Company, which has been, or may be, issued under the resolutions aforesaid; and also for the payment of any loss or damage which the Bank of Washington may sustain in virtue of their endorsement of said bills of exchange, described as aforesaid, with power to the said Trustees, or to the survivor of them, or of the heirs of such survivor, to sell the said bonds of the State of Maryland, so as aforesaid described, at any time after the execution of this instrument, if to them it should seem expedient for the interest of all parties concerned, and to apply the proceeds of said bonds immediately to the payment of said promissory notes or scrip, with the interest due thereon; and also to the payment of any loss or damage which the Bank of Washington may sustain in virtue of their endorsement of the said bills of exchange, should any loss or damage be sustained in consequence of such endorsements, and the surplus money, if any, after the performance of the trust aforesaid, to hold to and for the use and benefit of the said Chesapeake and Ohio Canal Company, and subject to their order. In witness whereof, Francis Thomas, President of the Chesapeake and Ohio Canal Company, hath, on the 22d day of January, in the year 1840, hereunto subscribed his name and affixed the corporate seal of the said Com-

pany in due execution of the power and authority vested in him as aforesaid.

(Signed)

Whereas, the Chesapeake and Ohio Canal Company did, by a resolution of the President and Directors therof, on the 25th day of September, in the year eighteen hundred and thirty-nine, resolve, order, and determine to issue various promissory notes or scrip in payment of debts due or to become due by said Company, and made payable to bearer, which notes have been issued to the amount of three hundred thousand dollars, payable six months after date, with interest thereon: And whereas, the said Chesapeake and Ohio Canal Company are desirous of securing the payment of the said promissory notes or scrip, and also the payment of any other promissory notes or scrip, which have been issued under former resolutions, a schedule of which notes now in circulation is hereto annexed, did by a resolution of the President and Directors of the said Chesapeake and Ohio Canal Company, on the twenty-second day of January, in the year one thousand eight hundred and forty, direct the President of the said Canal Company to assign and transfer certain bonds of the State of Maryland, and also a certain claim upon the State of Maryland for other bonds, the property of the said Canal Company, hereinafter more fully described, to James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, any two of whom shall have authority to act in trust for the purposes hereinafter expressed; and did further order and direct the President of the said Canal Company to execute a deed in the name and by the authority of the said Canal Company to carry into effect the object and intent of the said resolution: And whereas, the said Canal Company did, by their deed dated the twenty-second day of January, in the year eighteen hundred and forty, convey to the said Trustees the said bonds and claim, for the purpose of paying the said promissory notes or scrip, and also to save harmless the Bank of Washington from any loss or damage which said bank might sustain in consequence of having endorsed certain bills of exchange drawn for the use of the said Canal Company, which said bills of exchange have been paid by said Canal Company since the date of the said deed to the said Trustees, or the advice of the said payment has been received since the date thereof: And whereas, the said Trustees have signified to the said Canal Company their unwillingness to except the said trust deed, or to act as Trustees under the same, unless the said Canal Company shall designate and prescribe the time and manner of paying off and satisfying the said promissory notes or scrip more specifically than is mentioned in said deeds; and the said Canal Company, being desirous of gratifying the said Trustees and of lessening their responsibility as trustees, have determined to issue this instrument of writing: Now, therefore, this indenture, made between the Chesapeake and Ohio Canal

Company by Francis Thomas, President thereof, acting in the name and behalf of said Company, in consideration of the premises, and in due and faithful performance of the intent of the said Company, ordered and determined as aforesaid, and of the power and authority vested in the said President and Directors as aforesaid, and in the said Francis Thomas, President of the said Chesapeake and Ohio Canal Company of the one part, and James Swan and John S. Gittings and William Gunton of the other part, witnesseth, that for and in consideration of the premises aforesaid, and of the sum of five dollars, current money, to him, the said Francis Thomas, of the first part, in hand paid for the Chesapeake and Ohio Canal Company by the said James Swan, John S. Gittings and William Gunton, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Francis Thomas, President of the Chesapeake and Ohio Canal Company, acting in the name and in the behalf of the said Company, and in the due and faithful performance and execution of the intent of the said Company, as expressed in the resolution aforesaid, and of the power and authority vested in him as aforesaid, hath given, granted, transferred, bargained, and sold, and by these presents doth give, grant, transfer, bargain, and sell unto James Swan, John S. Gittings and William Gunton, and to the survivor of them, and to the heirs of each survivor, in trust for the purposes hereinafter particularly set forth and expressed, all the interest, right, property, claim, and estate which the said Chesapeake and Ohio Canal Company hath in and to two hundred and forty-eight bonds of the State of Maryland, for two hundred and fifty pounds, sterling money, each bearing five per cent. interest per annum, issued in favor of the Chesapeake and Ohio Canal Company, under the Act of the General Assembly of Maryland, passed at its December Session, in the year eighteen hundred and thirty-eight, chapter 386, which bonds are numbered as follows, viz:—

Number 2,482 to 2,521, inclusive of both,	40	bonds.
Number 2,582 to 2,699, inclusive of both,	118	"
Number 2,700 to 2,781, inclusive of both,	82	"
Number 2,914 to 2,921, inclusive of both,	8	"
Making	248	bonds.

All of which are now in possession of the before mentioned Trustees; Also, all the right, title, interest and claim which the said Chesapeake and Ohio Canal Company has in and to a further issue of the bonds to the said Canal Company, under the provisions of the aforesaid Act of the General Assembly of Maryland, and to the bonds which might be issued in favor of said Canal Company in virtue of said act; to have and to hold the said bonds so as aforesaid described, as well those issued as those that may be issued as aforesaid, to them the said James Swan, John S. Gittings and William

Gunton, and to the survivor of them, and to the heirs of such survivor: in trust, nevertheless, for the uses, intents, and purposes herein particularly described and declared, and to and for no other use, intent, or purpose whatever; that is to say, for the faithful payment of the promissory notes or scrip of the Chesapeake and Ohio Canal Company, which have been issued under the resolution aforesaid (and are embraced in the schedule hereto annexed), in full, as they may be presented from time to time to the said Trustees at the Chesapeake Bank, in the city of Baltimore, within six months from the date of this indenture, so far as the funds in the hands of the said Trustees at the time of such presentation may be sufficient for the payment thereof; and if more is presented at the same time by the same individual than the amount of funds in hand, the first application of any further funds to be the payment of the balance that may remain due after paying the said individual the amount of funds in hand, with power to the said Trustees or the survivor of them, to sell the said bonds of the State of Maryland, so as aforesaid described, after the execution of this instrument, if to them shall seem expedient, for the interest of all parties concerned; and to apply the proceeds of said bonds immediately to the payment of said promissory notes or scrip, with the interest due thereon, said payment of said notes or scrip to be made aforesaid, it being the intention of the trust hereby created, that the payments made on claims presented shall be in full, so far as the funds in hand will enable payment to be made, and that the said Trustees shall not be bound or authorized to retain in anticipation of any further claim, or for *for* the purpose of ascertaining a *pro rata* dividend, but shall pay claims in the order presented as presented, and to their full amount; and should claims be presented when the Trustees are not in funds to pay, the said Trustees shall not be bound to take notice thereof, unless the scrip or notes on which such claims arise be left with the Trustees, or any one of them, and that interest shall be allowed on all such claims only to the date of their being handed to and left with the said Trustees. And it is agreed that the said Trustees shall, at the end of six months from the date of this indenture, pay over to the Chesapeake and Ohio Canal Company all the money they may then have on hand, and deliver to the said Company all the bonds of the State of Maryland which shall then be unsold, whether all the aforesaid promissory notes or scrip shall have been paid, or whether a part thereof shall then still be in circulation.

In witness whereof, Francis Thomas, President of the Chesapeake and Ohio Canal Company, hath, this fifteenth day of April, in the year eighteen hundred and forty, hereunto subscribed his name and caused the corporate seal of the said Company to be hereto affixed in due execution of the power and authority vested in him as aforesaid.

[SEAL.] (Signed) FRANCIS THOMAS,
President.

(Signed) Attest, JOHN P. INGLE,
Clerk C. & O. C. Co.

Schedule of notes issued by the Chesapeake and Ohio Canal Company, so far as they are in circulation, on this fifteenth day of April, 1840, being the same referred to in the foregoing deed of trust, viz:—

Notes under the denomination of $5, issued in the year 1837, payable on demand, ...		$11,688.50
In the year 1837 and 1838, payable on demand, .		$5,950.00
Notes of the denomination of 5, 10, and 20 dollars, issued in the year 1837, payable six months after their date, with interest, ...		770.00
Notes of the denomination of 5, 10, and 20 dollars, issued under the order of the 25th of September, 1839, payable six months after date, with interest, viz:—		
On the 9th of November, 1839, . .	$168,000	
On the 9th of December, 1839, . .	$72,360	
On the 10th of January and 10th of February, 1840, ...	$59,640	
		300,000.00
	Dollars	$318,408.50

(Signed) JOHN P. INGLE,
Cl'k C. & O. C. Co.
FRANCIS THOMAS,
Pres't.

He also proved that the bonds of the State of Maryland, described in the last mentioned deed, were, with the consent of all the grantees, placed in the hands of the said John S. Gittings, and that the said bonds were sold by him at different times, and in parcels, the first of the said sales having been made in May, 1840, and the last on the twenty-seventh of February, 1841, and that the said sales amounted in the aggregate to the sum of $344,117$\frac{26}{100}$, and that he had received for interest accrued on said bonds, prior to the sales thereof, the sum of $16,958$\frac{62}{100}$, and that William Gunton, one of the grantees named in the deed from the Chesapeake and Ohio Canal Company, resided at the time of making the deed, and has ever since resided in the District of Columbia.

The garnishees therefore proved, that the said Gittings, in the execution of the trust, employed the Chesapeake Bank as agent, to redeem the scrip mentioned in the deed of trust, and it did redeem scrip to the amount of $304,883$\frac{26}{100}$, and made other disbursements on account of the trust, to the amount of $19,941$\frac{92}{100}$, and that the said bank acquired after the deed of April 15th, 1840, and before the 14th April, 1841, acceptances of the Chesapeake and Ohio Canal Company, not provided for by the trusts of said deed, to the amount of $27,976.53.

That on the 25th June, 1841, a bill was filed in the Court of Chancery, in Maryland, against the said garnishees and the Chesapeake and Ohio Canal Company and others, by the Bank of Potomac, claiming as assignee of the surplus which remained after satisfying the trusts under the deed of April, 1840, and praying an account and settlement of the trust, which bill is in the following words: (it being agreed between the parties that the said bill and other portions of the pleadings or proceedings in that case hereinafter mentioned to have been produced and read, shall be received in evidence and have the same effect as if the whole record was produced, and such pleadings or proceedings read from it.)

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF POTOMAC

vs.

JAMES SWAN, JOHN S. GITTINGS, WILLIAM GUNTON, THE CHESAPEAKE AND OHIO CANAL COMPANY, AND THE ALEXANDRIA CANAL COMPANY.

To the Honorable THEODORICK BLAND, Chancellor of Maryland:

Humbly complaining, show unto your honor your orators, "The President, Directors and Company of the Bank of Potomac, in the town of Alexandria, and district of Columbia, incorporated by Act of Congress, approved February 18th, 1811:

That heretofore, to wit: on or about the twenty-fifth day of September, eighteen hundred and thirty-nine, The President and Directors of the Chesapeake and Ohio Canal Company resolved to issue various promissory notes or scrip, in payment of debts due, or thereafter to become due by said Company, and made payable to bearer, to the amount of three hundred thousand dollars, payable six months after date, with interest thereon, and for the purpose of securing the payment of said promissory notes or scrip, and for the purposes in the deeds of transfer hereinafter exhibited, stated, and explained, on the twenty-second day of January, eighteen hundred and forty, made and executed by the President thereof, in pursuance of authority in him vested by the resolutions of said President and Directors, a deed of conveyance and transfer to James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, a copy whereof is herewith exhibited, marked A, and which, with all other exhibits hereinafter referred to, your orators pray may be received and taken as a part of this their bill of complaint.

That said Trustees declined to accept said deed, and the trust therein, and thereby declared and created and returned the same to said President and Directors, who subsequently, to wit: on the 15th day of April, eighteen hundred and forty, made and executed a deed of conveyance and transfer (a copy of which is likewise herewith exhibited, marked B), which was duly delivered to and accepted by the said James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, the Trustees therein

named; that the date of the said last mentioned deed and its acceptance by the said Trustees, the bonds transferred by it, now, and always afterwards, remained in the possession of said grantees, or of some one of them, until they were sold or disposed of for the purposes of said trust. That said bonds so transferred were of very large value, and yielded more than enough to fulfil all the objects provided for by said conveyance. Your orators further represent that "The Alexandria Canal Company," incorporated by Act of Congress approved May 26th, 1830, by an Act entitled an Act to incorporate the Alexandria Canal Company, having a large claim against the Chesapeake and Ohio Canal Company aforesaid, and having repeatedly pressed for the payment thereof, on the fifteenth day of April, 1840, received from said Chesapeake and Ohio Canal Company the sum of two thousand dollars in cash, and the bond of said Company for the sum of seventeen thousand three hundred and seventy-nine dollars and twenty cents, payable six months thereafter, with interest thereon (a copy of which said bond is herewith shown, marked C, your orators being ready to produce the original whenever the same may be required by this honorable Court). That to assume the payment of said bond, said Chesapeake and Ohio Canal Company on the same day and year passed an order (a copy of which is herewith produced, marked D). That by force of said order, as your orators are advised, any surplus of funds arising out of the state of the bonds hereinbefore stated to have been transferred after satisfying the trusts created by said before mentioned conveyance, was equitable, pledged in the hands of said Trustees for the payment of said bond to the Alexandria Canal Company. Your orators further represent, that the said Alexandria Canal Company, on the day of eighteen hundred and forty, for a full and valuable consideration endorsed over and assigned to your orators said bond of the Chesapeake and Ohio Canal Company, whereby your orators became subrogated to all the rights of the said Alexandria Canal Company in and to said bond, and the surplus in the hands of the Trustees before named; and that being so entitled, your orators caused notice of said assignment of said bonds, and of said order, and of the claim of your orators, to be duly given to said Trustees, under the said conveyance.

Your orators further state, that the time limited for the completion of the trust created by said beforementioned and exhibited conveyance and transfer has long since expired; that said Trustees have sold or otherwise disposed of said bonds so as aforesaid transferred and conveyed to them; that they hold in their hands a large surplus, proceeds of said bonds, after satisfying all the legitimate objects of said trust—more than sufficient, as your orators believe, to meet and pay the claim of your orators—notwithstanding which the said Trustees have refused to account with or to satisfy the just and equitable claim of your orators, altho' repeatedly applied to for that purpose.

Your orators are advised that under the circumstances above re-

cited, the surplus funds in the hands of the said James Swan, John S. Gittings, and William Gunton, arising from the sale or other disposition of said bonds, transferred to them under said deed of conveyance, is liable to your orators' demand under the assignment from the Alexandria Canal Company, the trust purposes contemplated by said deed having been accomplished, and that this honorable Court is competent to require said Trustees to exhibit a full and particular account of their proceedings under said deed, and to decree an appropriation by them of so much of the surplus fund in their hands as may suffice to extinguish the demand, principal and interest, of your orator.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises, and have them in this honorable Court, where matters of trust are peculiarly cognizable, and to the end that the just claim of your orators may be paid and satisfied, may it please your Honor to grant to your orators the State of Maryland's most gracious writ of subpœna to the said James Swan, John S. Gittings, and William Gunton, the said Chesapeake and Ohio Canal Company, and the said Alexandria Canal Company to be directed, commanding and requiring them, by some day therein to be limited, to be and appear in this honorable Court, to answer in the premises as fully as if the same were here again repeated, and they were thereto specially interrogated; and to show cause, if any they have, why a decree should not be passed as prayed. And, may it please your Honor more particularly to require the said James Swan, John S. Gittings, and William Gunton, upon their corporal oaths, to answer and say,—

1*st.* Whether they did or did not accept said trust, created by said deed of the fifteenth day of April, eighteen hundred and forty?

2*d.* What have been their proceedings under said deed?

3*d.* What number of bonds are held or received by them under said deed? when were they disposed of? to whom, and for how much?

4*th.* How have the proceeds of said bonds been applied, and under what authority?

5*th.* What is the state of their trust account, and what surplus of money or bonds remain in their hands, and that said account may be accompanied by vouchers for each item thereof.

6*th.* Did or did they not know of some equitable pledge of said surplus to the Alexandria Canal Company, and of the assignment of the claim of the said Alexandria Canal Company to your orators, and when the first had notice or knowledge of said pledge and assignment?

And may it please your Honor to decree the payment to your orators of said claim of said Trustees and other defendants, and to extend to your orators all such other and further relief in the premises as may consist with equity; and your orators will ever pray, &c.

(Signed)

And the said bill having been read, the defendants offered and

read in evidence the following account of the administration of the said trust fund, which was filed in the Court of Chancery by the said John S. Gittings, with his answer to the said bill, and as an answer to that portion of it which prayed an account—

DR.

Trust property of Chesapeake and Ohio Canal Co., in account with Jas. Swan and John S. Gittings, Trustees.

To Scrip redeemed		$305,225 88
" Commissions allowed Swan and Gittings		6,893 30
" Acceptances of Chesapeake and Ohio Canal Co.		27,976 53
" Int. on over D'fts from 1st Jan. to 27th Feb.		1,143 03
" " " " to 1st Jan.		7,342 16
" Fees to Glenn and Campbell		600 00
" Cash advanced in 1840		4,375 63
" Bill for advertising		9 50
" Paid Fillebrown for services		45 00
" Expenses Swan and Gittings to New York		133 30
" Trunk and tin cases for Mr. Turner		8 56
" Bill for writing sterling bond		25 00
" Balance (see credit side below)		
		$361,075 88

CR.

By Amount rec'd from sale of bonds	$344,117 26
" Interest rec'd on said bonds	16,958 62
	$361,075 88
1842. By Balance	$7,297 99

that afterwards, in the progress of this cause in the Court of Chancery, the plaintiff in this attachment and the Chesapeake Bank were made parties defendants to said suit in Chancery, and answered and were before the Court as parties when the first decree was passed. That the said Gittings, subsequently to the filing of the above mentioned account, and before the final decree, paid other sums out of the trust fund, amounting together to $976\frac{18}{100}$, of which the following is an account:—

(This account is not found among the papers.)

1841.		
April 22.	To Trunk for Mr. Turner	$2 50
May 18.	" Notes redeemed 28th April	342 62
22.	" Freight and tin cases	6 06

June 9.	To bill writing bond	25	00
30.	" Fee to J. Glenn	500	00
1842.			
Jan. 22.	" " J. M. Campbell	100	00
		$976	18

and then read in evidence the following opinion and final decree of the Court of Chancery in the said suit:—

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF POTOMAC

vs.

JAMES SWAN, JOHN S. GITTINGS, WILLIAM GUNTON, THE CHESAPEAKE AND OHIO CANAL COMPANY, AND THE ALEXANDRIA CANAL COMPANY.

In Chancery, March Term, 1851.

This case having been certified to me by his Honor the Chancellor, and being ready for trial, was fully argued.

The Chesapeake and Ohio Canal Company having issued scrip or promissory notes payable to bearer, to the amount of about $300,000, payable six months after date, in order to provide for its redemption on the 22d January, 1840, executed a deed of trust to James Swan, John S. Gittings, and William Gunton, with power to any two of them to act, of 40 bonds of the State of Maryland, then in the custody of the Bank of Washington, and of 200 bonds in the custody of the Bank of America, in trust, to sell the said bonds and apply the proceeds to the redemption of said scrip, and to indemnify the Bank of Washington from any damage which it might sustain in consequence of certain endorsements mentioned in the deed, and to hold the residue, if any, for the benefit of the Canal Company, and subject to their order.

This deed, as is stated in the bill, the Trustees declined to accept, and returned it to the grantor, who on the 15th of April, 1840, executed and delivered to the said Trustees another deed, which they did accept. This deed *recites* that the Trustees in the former deed had signified to the Canal Company their unwillingness to accept the said trust deed, or to act as Trustees under the same, unless the said Company should *designate and describe the time and manner of paying off and satisfying the said promissory notes or scrip more specifically than is mentioned in said deed*, and transfer to the said Trustees 248 bonds of the State, of which the numbers from 2642 to 2781, and from 2914 to 2921, inclusive, only are common to both deeds—the number of said bonds and the amount conveyed being the same—which bonds are stated in the deed to be *in the hands of the Trustees*, at the date of the execution of the deeds. This deed also provides for the payment of the scrip mentioned in the schedule thereto annexed in full, as they may be presented from time to time to the said *Trustees at*

the Chesapeake Bank in the city of Baltimore, *within six months* from the date of the deed.

There are other provisions as to the mode of payment, and one for the payment over to the Canal Company of the residue of bonds and money on hand at the expiration of the six months.

The Alexandria Canal Company, incorporated by the act of Congress, approved May 26th, 1830, had, at the date of the execution of the last mentioned deed, a claim against the Chesapeake and Ohio Canal Company, originating in the following manner: The original charter of the Chesapeake and Ohio Canal Company by Virginia, and confirmed by the act of the Maryland Legislature of 1824, chapter 79, sec. 21, reserved to the United States the power to extend the said canal in or through the District of Columbia, or either or both sides of the Potomac River. In pursuance of this power, the Alexandria Canal Company was incorporated by the act of Congress of 1830, ch. 109, and authorized to complete a canal from *the termination* or *other point* on the Chesapeake and Ohio Canal Company to Alexandria. In the construction of this canal, an aqueduct across the Potomac was necessary, and an abutment on the northern side to connect it with the Chesapeake and Ohio Canal. Arrangement was made between the two Companies that the Chesapeake and Ohio Canal Company should be at the expense of a part of that abutment, but that it should be constructed by the other Company. This claim was for the expense of that part of the abutment, and on the same day that the last deed was executed, to wit, April 15th, 1840, a part of it was paid in cash by the Chesapeake and Ohio Canal Company, and a bond or note given to the Alexandria Canal Company for $17,379 20, another part payable six months after date, in pursuance of an order passed by the former; which order further provided, "that as a *security* for the punctual payment of the said bond at its maturity, any surplus of money or State bonds which may be in the hands of said Trustees, appointed on the 2d day of January last by this Court, for certain purposes, after they shall have closed the trust then created, be and the same are hereby *pledged and set apart.*"

A copy of this order, attested by the Clerk, to which is appended a certificate of the same date by the same clerk, that the bond therein mentioned was executed and delivered to the Alexandria Canal Company, appears to have been put into the hands of the said Company, but there is no positive proof in reference to the delivery of the order at that time.

This bond was discounted by the Potomac Bank for the Alexandria Canal Company, and duly transferred to the Bank, and the copy of the order also transferred by the President of said Company. Notice of this transfer was received by the Trustees and the Chesapeake Bank about the 20th September, 1840.

The bonds transferred, as before mentioned, by the deed of January and April, 1840, were sold by the authority of the Trustees, and the scrip paid off at the Chesapeake Bank, leaving a large balance, more

than sufficient to pay the amount of the transferred bond; but the bonds were deposited by John S. Gittings, one of the trustees, with the Chesapeake Bank, he alleges, as a pledge to secure the payment of large advances made to the Chesapeake and Ohio Canal Company for the redemption of the scrip before the bonds could be advantageously sold, which advances have, however, been repaid by the proceeds of the bonds sold. The Company was also allowed to overcheque, at their request, to the amount of near $5,000 on the credit of the balance to become due to the Company; and the Chesapeake Bank also bought or paid certain acceptances of the Company made for work done to nearly the full amount of the balance.

This bill is filed by the Potomac Bank against the two Companies. The Trustees under the two deeds, the Chesapeake Bank, and Patrick McLaughlin, a creditor of the Chesapeake and Ohio Canal Company, who has laid an attachment in the hands of the Chesapeake Bank, to compel an account, on the part of that Bank and the Trustees, and the payment of the complainants' claim, on the ground that the order of the Chesapeake and Ohio Canal Company, of the 15th April, 1840, operated as a fixed lien in favor of the Alexandria Canal Company, on the balance in the hands of the Chesapeake Bank, after the payment of the scrip, and that by virtue of the transfer of the bond and order by that Company, the complainants became subrogated to their rights.

The defendants, Gittings and the Chesapeake Bank, deny, in the first place, the right of the Chesapeake and Ohio Canal Company to make the contract under which the complainant derives his claim.

They deny that any pledge was made of the surplus of the trust funds to pay that part of the debt assigned to complainant. They deny that any sufficient transfer of the pledge, if existing, has been made to complainant, or if made, that it carries the lien with it. They assert a right on the part of the Chesapeake Bank to retain the surplus, on the ground that by, for the alleged transfer, the Chesapeake and Ohio Canal Company would be entitled to receive it, and that they could not demand it without paying out of it all the claims, of whatever nature, of the Bank against them; and the *notice of the transfer* not having been given to the Bank until the claim against the Company had originated by the purchase of the acceptances, the assignee could stand in no better situation than the assignor.

The first question is as to the right of the Chesapeake and Ohio Canal Company to make the contract. The debt for which the bond was given, was incurred by agreement, for the construction, in part, of the northern abutment of the Potomac aqueduct of the Alexandria Canal. The defendants say, that the Chesapeake and Ohio Canal had nothing to do with this abutment. The charter only empowered them to complete their canal to the tide-water, and to keep it in repair; that the power of *extending the canal* reserved by the United States, if properly exercised by the charter, authorized the

Alexandria Canal Company to *connect* their work with the Chesapeake and Ohio Canal, but not to burthen the latter Company with the expense of it, and they were bound so to use their right as not to injury the Chesapeake and Ohio Canal. These objections have been conclusively answered by the complainant. The Alexandria Canal Company had the right to form a connection with the Chesapeake and Ohio Canal at any point *at or near its termination*, which would be most convenient and suitable for the construction of the Canal. The power reserved to the United States to *extend the canal*, did not confine the beginning of the extending canal to the basin at the termination in Rock Creek, nor to the termination of the canal in Washington. It was necessary, as was contended by one of the counsel, to begin at an elevation sufficient to carry the water its whole length, on a suitable sight, and it is shown by the evidence in the cause, that it was necessary to retire from the mouth of the canal to effect that purpose, as well as to get a suitable place for the construction of the aqueduct across the Potomac.

It would require too much space to enter into the particulars of the evidence; it is, however, sufficiently proven that the place where the aqueduct was constructed, was not the most suitable place for its construction, but that the site was selected by the Chesapeake and Ohio Canal Company for its own convenience, partly to strengthen the wall of the canal in the construction of the abutment, and that the abutment did answer the purpose of a buttress, where it was needed, or supposed by the Company to be needed. The Company may have erred with regard to this fact; the advice given them by their engineer, upon which it was based, may have been ill-founded; it may have been a waste of the funds of the Company; but as they were advised by competent officers that a buttress for that part of their own work was required, and that it was obligatory on them to provide an abutment for the aqueduct, and that this abutment might be constructed to answer all the purposes of a buttress, it was fully as competent for them to construct the abutment as any ordinary work for the support of the walls of their canal. Whether more was expended in the construction of the abutment than would have been required for an ordinary buttress, does not appear, and the presumption should be that there was not. If there was, however, it appears, in some measure at least, to have been caused by the act of the Chesapeake and Ohio Canal Company, in insisting upon a location of the aqueduct in a place where the abutment would be, necessarily, more expensive.

There was also a dispute between the Companies respecting the obligation to construct the northern abutment. After some discussions, the Canal Company having been advised that it was incumbent on them, finally yielded the point.

That it was not so incumbent on them, is by no means clear, as the stop-gate for which it was needed was to remain under their contract, to secure to them, at all times, a sufficiency of water for their

own purposes. It seems to me, therefore, that the contract was within the scope of their charter, and consequently a legal one.

The next question is, was there any lien given by the Chesapeake and Ohio Canal Company to the Alexandria Canal Company on the surplus of the trust fund, to secure to them the payment of their bond. This was no formal agreement, entered into between them to that effect, no legal transfer in the usual mode; but it is evident, from all the circumstances attending the transaction, and the act of the parties afterwards, that such was the understanding between them, and that the Chesapeake and Ohio Canal Company undertook to create such a lien, whether they used the most effective means or not.

The one Company gave to the other its bond creating, so far as they were competent to do so, a perfect obligation on them to pay its amount, and it is given by virtue of the same order which is supposed to create the lien. The Alexandria Canal Company must have known of, and accepted this order, as a contract binding on the other Company, for, connected with the fact of its being passed before the bond was executed, and on the same day, we find them in possession of a copy of the order, certified by the Clerk, on the same day, and shortly after assigning it to the complainants as an instrument having that effect, and accompanying the assignment of the bond. The order itself speaks a plain language. After decreeing the bond to be given, it directs that as a *security* for the punctual payment of the said bond at its maturity, any surplus of money, &c. be, and the same is hereby pledged and set apart. They offer to the Alexandria Canal Company in settlement of their bond, instead of the cash, which, being embarrassed in present means, it was not convenient to pay, and say to them, take our bond, it shall be *punctually* paid, for we *pledge* these funds as a *security* to you for its punctual payment.

The Alexandria Canal Company take their bond under this assurance and a pledge. If, as is contended by the defendants, it is a mere designation of this fund, and a direction to its disbursing officers to use it, when received, to discharge this obligation, and is revokable at the pleasure of the Company, it is no *pledge* at all; it is no *security*. The use of such language is delusive; but give to the language its natural import, it is an offer, and when accepted, a valid contract, binding the Company irrevocable, and creating, as far as the instrument can create it, a lien upon the surplus trust fund for the payment of the bond.

I see no reason why it should not be competent to create a lien. It is a valid act of the Company offering the bond, and the security with it. The bond is accepted and the security also. What more can be necessary? The form of the act is immaterial. Sec. 1044, and cases there cited. But another difficulty is suggested as to the property on which the lien was given. The order expresses it to be on any surplus money, &c. in the hands of the Trustees appointed

on the 22d day of January last, after they shall have closed the trust *then created.*

Was there any trust *then created?* Is the deed of that date now operative in connection with, and as modified by the deed of the 15th of April, or is it totally inoperative and superseded by the latter deed? Independent of the bill and answer there seems to be nothing in the case illustrative of the transaction in this particular, but a recital in the second deed of April 15th. This recital is "That, whereas, the said Trustees have signified to the said Canal Company their unwillingness to accept the said trust deed or to act as trustees under the same, unless the said Canal Company shall designate and prescribe the time and manner of paying off and satisfying the said promissory notes or scrip more specifically than is mentioned in said deed, and the Canal Company being desirous of gratifying the said Trustees, and of lessening their responsibility as Trustees, have determined to execute this instrument. After this recital we might have expected to have seen some attempt to confirm the prior deed, subject to the recited modifications; instead of which the deed proceeds to convey by *numbers* certain bonds of the same amount as those conveyed by the first deed, but differing, many of them, from the numbers in that deed, and makes provisions not contained in the first deed as to the time and manner of executing the trust without any further reference to the first deed. Instead of modifying the first deed, the Company seem to have executed a new deed, complete in itself, requiring no aid from the first, and creating a new trust of a different property.

What effect can be given to the first deed I cannot perceive. It seems to have been entirely superseded by the second. If, therefore, the order of April 15th, 1840, is confined, as by its terms it is, to the trust of the first deed, it can give no lien on the surplus funds of the trust of the second deed; but there is a manifest mistake in the order. The second deed, though of the same date as the order, had probably not been executed or drawn when the order was written, and the Board might have supposed that it would be connected with and a modification only of the first. There was but one trust, that created by the deed of April 15th, 1840, and the intention of the Company must have been to give the lien on that trust fund. The error in the order, if obvious, and the manner of its occurrence, might probably be easily accounted for by the testimony of those participating in the transaction. The complainant, however, is not entitled to relief under the present bill. No mistake is alleged in the bill; there is no allegation that the second deed is a modification only of the first and connected with it; but, on the contrary, it is alleged that the said Trustees declined to accept said deed *and the trust thereby* declared and created, and *returned* the same to the said President and Directors, who subsequently made and executed a deed of conveyance and transfer, which was duly delivered to *and accepted* by the said Trustees, and

throughout nearly the whole bill the complainant seems to rely on the second deed only.

In the sixth page of the bill the complainant, under the *circumstances above recited*, claims the surplus funds arising from the bonds transferred to the Trustees under the *said deeds*.

The word deed has there been altered to the plural, but immediately thereafter the bill speaks again of the *said deed*. If the bill contained the proper allegations, I think the complainant would be entitled to relief.

There is full proof of the assignment of the bond, and there is proof also of an assignment of the order sufficient to show that it was the intention of the parties to it, that the lien or right derived from the order should go with the bond. I think it would go as an evidence of the bond, although the assignment should be deemed imperfect. It is more like a mortgage or pledge by contract than an equitable lien; my opinion would be the same.

I am not perfectly satisfied with the doctrine of our State Courts with reference to equitable liens. I am nevertheless bound by them; they don't, however, embrace this case. In the case of Schnebly and Lewis *vs.* Raglan, 7 *Gill & Johns.* 120, the debt was assigned *without recourse* to the assignor, and the Court put the case on the ground "that so far as the assignor was concerned, it amounted to a payment and satisfaction of his claims. The lien was intended to secure the payment of the purchase-money to the vendor, and the assignment of the notes without responsibility for their ultimate payment, it is to be presumed, was equally as beneficial to him as if he had received the amount of them in money."

The remaining questions are, 1st, whether the Chesapeake Bank was right to repay itself out of this surplus, its advance of $4,300 to the Chesapeake and Ohio Canal Company; and, 2d, was the said bank right in returning out of this surplus the amount of acceptances paid or purchased by them.

As to the first question, I think it was right; the Bank had in its possession funds of the Chesapeake and Ohio Canal Company, which had been deposited with it by the Trustees created by that Company, the Company being themselves *cestui que* trusts of a part of the funds. The Company obtained a loan by express agreement upon the credit of that fund.

As against them the Bank had an undoubted right to retain the bonds in their possession, and the proceeds when sold, until that loan should be paid. The Company, however, before this agreement and advance, had transferred their interest in this fund by an equitable assignment to the plaintiffs. The Bank as to this advance is a purchaser for a valuable consideration, of the bonds in its possession; and the advance having been made before any notice was given to the Trustees or the Bank of this assignment, the assignees must be postponed to the Bank.

In the investigation of the second question, to wit: whether the

Bank has a right to retain out of this surplus the amount of acceptances paid or purchased by them, it will be well to consider in the first place, in what relation the Bank stands to the complainants as to this surplus. There were three Trustees of these bonds, whose duty it was, *by the deed of trust*, to pay certain scrip in full as it may be presented *to the said Trustees* at the Chesapeake Bank, and at the end of six months to pay over to the Canal Company all the money they may then have in hand, and to deliver to them all unsold bonds. One of these Trustees was President of the Chesapeake Bank, and this provision as to the place of payment was inserted probably partly for his convenience (it being convenient for the scrip holders, also, that some place should be designated), and partly to engage his acceptance of the trust, enabling him to make his bank the depository of the funds; but no trust is confided to the Bank, or any agency expressly given to it by the deed; accordingly we find him taking upon himself nearly all the active participation in the trust.

Of the other Trustees, Swan says that the bonds were sold by Gittings, with his co-operation and assistance, and the proceeds of said sales were deposited by said Gittings in the Chesapeake Bank, and that this respondent *never sanctioned* the application of the surplus to any other purpose than the payment of the complainants' claim.

The answer of the third Trustee, Gunton, denies his participation in any appropriation of the surplus funds to any other purpose than those contemplated by the deed and assignment, both of them recognizing the complainants' claim.

Gittings alleges, that not being able to sell the bonds to advantage in time, the Chesapeake Bank, *at his instance*, and with the *knowledge and consent* of the other trustees and the Canal Company, undertook to furnish the necessary funds, *on a pledge of the bonds*, and with their consent the bonds went into the possession of the Bank, and the sales were made *by the consent of the Bank*, and the proceeds deposited in lieu of them.

The answer of the Bank is to the same effect, making Gittings' answer a part of its answer.

As to the testimony on this point, Lounds states that the Bank received the bonds from John S. Gittings on behalf of the Trustees, and held them as collateral for the advances made for the redemption of the notes of the Canal Company, his information being derived from Mr. Gittings at the time of the deposit. I am not aware of any testimony as to that point. Two of the counsel, who argued for the Bank, contended that the Bank was a fiscal agent for the Canal Company, and as such could not be called upon for a balance of the fund, for the administration of which its agent was employed, without paying, if required, all other sums due to that agent.

The counsel who argued last for defendants contended, in ac-

cordance with their answers, that the Bank was a pledge of the bonds to cover advances for the payment of scrip, and having the pledge in possession, or the proceeds of its sale, could not be compelled to pay any balance without being permitted to retain out of it any claim which it might have against the pledge; the assignee, without notice, being in the same condition.

The complainant argued that the Bank was not a fiscal agent, nor a pledge of the Canal Company, but a mere depository of the Trustee.

There is certainly nothing in the deed making a fiscal agent of the Bank. The scrip was to be presented to the Trustees at the Chesapeake Bank. One of the Trustees being always there, as President of the Bank, could conveniently pay in one capacity by the agents under his control in another. That, no doubt, was what was contemplated by the Canal Company when it made that provision. It would be a strange confusion of power to have a fiscal agent empowered to administer the funds, and Trustees having the whole power over it.

It is difficult to discover how it could have acquired of pledge. There is no allegation, nor evidence of any kind, that it acquired it from the Canal Company. The Trustees, having power to sell, may have thereby the power to pledge also; but where is the evidence that they have exercised that power? There is none in the answers of Swan and Gunton (if that could avail) that they participated in it. Gunton did not interfere. Swan says that he aided in the sales; and it may be inferred, from his answer, that he permitted Gittings to deposit the proceeds in the Bank; but Gittings, according to the evidence of Lounds, delivered the bonds to the Bank as a pledge for advances made. Where did he derive the power so to pledge them, without the assent of the other Trustees. The first deed gave the power over the bonds, within the limited of the trusts, to any two. The second deed gave the power generally. In that case one Trustee alone certainly could not so dispose of them. 10 *Law Lib.* 137, and note.

The only proof that the other Trustees and the Canal Company assented to his doing so, is to be found in the evidence of Lounds, which is objected to as incompetent, he having no personal knowledge of it, but deriving his information from Gittings. The Bank appears to have been nothing more than a depository of the bonds and of the proceeds when they were sold, deriving what advantage it might from its discounting them, relying for its safety on the power which was held, or supposed to be held by its President, in his character of Trustee. I have not discovered any action of the Board of Directors in the matter, but the President seems to have wielded, in that instance, the whole power of the Bank. As the mere depository of the trust fund, paying the scrip when presented by its officers, for the convenience of the Trustees, what power had it to go into the market and buy up claims upon the Canal Com-

pany more than any other bank with which the funds might have been deposited? What right would any bank have so to act, as against the assignee of the surplus of the fund deposited? If the surplus had never been assigned by the Canal Company, perhaps under the authority cited (although it would not have been a very creditable transaction in the Bank, if it bought with a view of absorbing the surplus), it might have been permitted to retain the amount of the claims as an *equitable set-off*, but as against an assignee, no Court of Equity would allow it, whether notice had been given of the assignment or not, no agreement having been made to that effect, with the real or ostensible owner. If it had paid the surplus to the Canal Company, or purchased it from them without notice of the assignment, it might have been a different case. The assignees ought to have been more prompt in giving notice to the trustees, and might have suffered for their neglect, if the Trustees had disposed of the surplus according to the provisions of the deed; but how could they have supposed that the Bank would have undertaken to divert the proceeds to objects not provided for or contemplated by the deed.

It was contended that the Bank might have paid the surplus over to the Canal Company, and that the Canal Company having settled with them, and adjusted their account, allowing them for the acceptances paid, it is the same in effect as if it had authorized them to appropriate it. But the fact is, the Canal Company never did approve of their payment of the acceptances; on the contrary, their proceedings show that they considered it a breach of faith upon the part of the Bank. To avoid litigation it allowed them, but had no right to do so *at that time*, the surplus having been before that time transferred to the complainant, of which transfer the Bank and others had notice, if that could influence the case.

Mr. McLaughlin's attachment, it seems, was laid before the filing of the bill in this case, but after the assignment of the surplus, and after notice thereof to the Trustees and the Bank, I cannot perceive on what ground his case can be sustained as against the Potomac Bank.

Having heard no argument on the part of McLaughlin, I deem it proper to reserve for future consideration, until the passing of the interlocutory or final decree, the conflicting agencies between the Bank and him.

When this cause is in a proper condition, I shall not hesitate to pass a decree in conformity with those views.

Signed, NICHOLAS BREWER,
Associate Judge of the Judicial District.

June 27th, 1851.

THE PRESIDENT AND DIRECTORS OF THE BANK OF POTOMAC
vs.
JAMES SWAN and others.

In Chancery—September Term, 1851.

The complainants having dismissed their amended bill, and the defendants, the Chesapeake Bank, and John S. Gittings, having withdrawn their exceptions to the sufficiency of the averments contained in the original bill of complaint, and the cause being again submitted and considered—

It is thereupon, this third day of November, in the year eighteen hundred and fifty-one, by Nicholas Brewer, an Associate Judge of the Third Judicial District, sitting for the Chancellor, and by the authority of this Court, adjudged, ordered, and decreed that the said Chesapeake Bank forthwith pay, or bring into this Court to be paid to the complainants, the sum of eleven thousand nine hundred and sixty dollars and fourteen cents, with interest thereon from the first day of the present month until paid; or bring in to be paid as aforesaid, and also to deliver to the complainant, the bond of the State of Maryland for three hundred and seventy-four pounds, sterling money, with the coupons thereto attached, which is mentioned in the proceedings.

And it is further adjudged, ordered, and decreed that the Chesapeake and Ohio Canal Company forthwith pay, or bring into this Court to be paid to the complainants, the sum of fourteen thousand seven hundred and eighty dollars and thirty cents, with interest thereon from the first day of the present month until paid, or brought in to be paid as aforesaid (being the balance of the sum due to the complainants, as stated in the proceedings), together with their costs of suit.

And it is further adjudged, ordered, and decreed that this cause be, and the same is hereby dismissed as against the defendant, Patrick McLaughlin, and this decree is passed without prejudice to the rights of the said McLaughlin against any and every of the parties to this suit.

NICHOLAS BREWER,
Associate Judge of the 3d Judicial District.

The undersigned counsel for the complainants and the Chesapeake Bank assent to this decree.

TH. S. ALEXANDER,
For Compl't.

THOMAS G. PRATT,
for Ches. Bank.

And thereupon the defendants prayed the Court to instruct the jury that the plaintiffs were not entitled to recover, because, under

the circumstances in which the trust fund was placed, no attachment could issue against it at law, and because also the decree of the Court of Chancery given in evidence, had appropriated the whole of the residue of the trust fund.

And the Court directed the jury that the plaintiff was not entitled to recover, and their verdict must be for the defendants:

1. Because the rights of the parties claiming as *cestui que* trusts, under the deed of April 15th, 1840, and the rights of those claiming an interest in the surplus after the *cestui que* trusts are satisfied, cannot be adjusted and determined in the proceeding by attachment against the Trustees in a court of law, and there is no evidence that any specified sum ascertained by the accounts of the Trustees, or by judicial decision, was due to the Chesapeake and Ohio Canal Company at the time this attachment was laid, or at any time since, after satisfying all legal or equitable claims on the fund placed in the hands of the Trustees.

2. Because there is no evidence that anything remained in the hands of the Trustees, after satisfying the trust mentioned in the deed, more than sufficient to satisfy the claim of the Alexandria Canal Company and others, having prior and superior claims on the fund to the plaintiff in this attachment.

3d. The plaintiff having become a party to the proceedings in the Chancery Court of Maryland, in the suit in which this fund was in litigation, and the Trustees in the fund being all before the Court, he is concluded by its decision while the decree remains in force.

To which opinion and direction of the Court, the plaintiff, by his counsel, prayed leave to except, and that the Court sign and seal this his bill of exceptions, which is accordingly done this day of November, 1852.

R. B. TANEY. [SEAL.]

And now here, at this day, to wit: the 22d day of November, in the year of our Lord, 1852, the said Patrick McLaughlin produced to the said Circuit Court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the records and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the City of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:—

THE UNITED STATES OF AMERICA, SS:

The President of the United States of America, to the Judges of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, greeting:—

Because in the record and proceedings, as also in the rendition of

the judgment of a plea which is in the said Court before you, or some of you, between Patrick McLaughlin, plaintiff, and James Swan and John S. Gittings, garnishees of the Chesapeake and Ohio Canal Company, defendants, a manifest error hath happened to the great damage of the said Patrick McLaughlin, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.] THO. SPICER,
Cl'k Cir. Court.

Issued 23d November, 1852.

In pursuance whereof, and according to the form and effect of the Act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly:

Know all men by these presents, that we, Patrick McLaughlin and John McColgan, are held and firmly bound unto James Swan and John S. Gittings, garnishees of the Chesapeake and Ohio Canal Company, in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said James Swan and John S. Gittings, their heirs, executors, administrators, or assigns, to which payment, well and truly to be done and made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 30th day of December, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas, at a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two, the said James Swan and John S. Gittings, garnishees as aforesaid, by the judgment of the same Court, recovered against the said Patrick McLaughlin their

charges by them about their defence in this behalf laid out and expended:

And whereas, the said Patrick McLaughlin hath sued out the writ of the United States of America for the correction of errors, and a citation directed to the said James Swan and John S. Gittings, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at the City of Washington on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid, so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf:

Now, the condition of the above obligation is such, that if the said Patrick McLaughlin shall well and truly prosecute with effect his said writ of error, and pay to the said James Swan and John S. Gittings, garnishees as aforesaid, their heirs, executors, administrators, or assigns, the costs and charges adjudged unto them by the said Circuit Court, and also all such damages, costs, and charges as may be awarded to them by the said Supreme Court, in case he shall fail to make good his said plea, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

P. McLAUGHLIN. [SEAL.]
JOHN McCOLGAN. [SEAL.]

Signed, sealed, and delivered in the presence of

THO. SPICER as to
PATRICK McLAUGHLIN.
P. McCOLGAN as to
JOHN McCOLGAN.

THE UNITED STATES OF AMERICA,

To James Swan and John S. Gittings, Garnishees of the Chesapeake and Ohio Canal Company, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, now in session at the City of Washington, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, wherein Patrick McLaughlin is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Patrick McLaughlin, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Given under my hand and seal, this third day of January, in the year of our Lord one thousand eight hundred and fifty-three.

R. B. TANEY. [SEAL.]

J. MASON CAMPBELL,
Att'y.